

WHEN WAS THE YALE LAW SCHOOL *REALLY* FOUNDED?

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I. Introduction

In 1874, during the celebration of the Yale Law School's "Semicentennial Anniversary," Theodore Woolsey, a former Yale President and Professor at the Law School, claimed that the Law School had been founded in 1824 when a group of students were listed as "Law Students" in the Yale Catalogue.¹ These students studied in a small proprietary law school started by Seth P. Staples and operated, in 1824, by Samuel J. Hitchcock and David Daggett. Their listing in the catalogue seems to indicate a connection between the Staples-Hitchcock-Daggett school² and Yale College. Since 1874, Yale historians and the Yale Law School itself have designated this 1824 connection as a founding, though with some apparent hesitation.³

This Note examines fresh evidence about the origins of the Yale Law School, including the affiliation of the Staples school with Yale College. It begins by analyzing the documents on which the 1824 founding date is based. Using this evidence, along with biographies and obituaries of Yale students, I show that, in fact, students in the Staples school were listed prior to 1824 under the category of "Resident Graduates." After examining Harvard College Catalogues, I show that Harvard Law School students were also listed as "Resident Graduates" during its early period.

In Part III, I place the 1824 claim in the context of the Law School's history. The semicentennial celebration of 1874 marked the emergence of the Law School from a difficult

¹ See THEODORE D. WOOLSEY, HISTORICAL DISCOURSE 9 (1874).

² For convenience, I will refer to this school as "the Staples school."

³ See, e.g., FREDERICK C. HICKS, YALE LAW SCHOOL: THE FOUNDERS AND THE FOUNDERS' COLLECTION 11-12 (1935) ("In 1824, a tenuous connection between the Staples school and Yale College was made by printing the names of fourteen law students in the College catalogue."); *Yale Law School: 1999-2000*, BULL. OF YALE U. (Yale U., New Haven, Conn.), August 10, 1999, at 20 (By 1824, the names of the students in [the Staples] school were printed in the Yale catalogue. This date therefore is usually taken to mark the founding of the Yale Law School . . .").

RECONSIDERING THE FOUNDING OF THE YALE LAW SCHOOL

I. Introduction

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historical period. I argue that the need for an institutional connection led to a poorly considered historical claim. For this reason, I suggest that there is no appropriate year at which to place the founding date. Instead, I suggest that the Staples school and Yale College merged almost accidentally over a period of fifty years. The slow affiliation of the institutions belies any notion of a founding.

II. Yale College Catalogues

The claim of 1824 as the founding date of the Yale Law School is based entirely on the appearance of the "Law Students" category in the 1824 Yale College Catalogue. To represent a true connection between the schools, the listing should include all students who were studying under Staples at the time the Catalogue was published. It should also exclude students who were not studying law under Staples. In truth, the 1824 Catalogue listing does not meet these criteria, and, therefore, it does not show an established connection between the two schools. Furthermore, catalogues from the year 1814 to 1823 indicate that almost all of the students in the Staples school were listed in the Yale Catalogue prior to 1824. This evidence seems to undermine the significance of the 1824 connection.

A. Over- and Under-Inclusiveness of the 1824 Catalogue

The primary source for determining the names of the students in the Staples school is the Cash and Account Book of the Staples law firm. This Book contains a list, in Staples's handwriting, of the students in his office from the years 1819-1824.⁴

⁴ See SETH P. STAPLES & SAMUEL J. HITCHCOCK, LIST OF STUDENTS WHO HAVE ENTERED THE OFFICE (1819-1824). This source is a photostatic copy of the original Cash and Account Book of the Staples and Hitchcock law firm. The copy is held by the Lillian Goldman Law Library at the Yale Law School. Its call number is YL 14 1824. The original Cash and Account Book has not been located but is reproduced by Hicks. See HICKS, *supra* note 3, at 12-14.

A comparison on the Staples list with the 1824 Catalogue indicates that the Catalogue is under-inclusive. The Catalogue omits the names of William Read and George B. Ripley. William Read enrolled on February 16, 1824, and stayed until September of 1825.⁵ George B. Ripley entered on May 19, 1824, and remained for six months.⁶ Since this Catalogue was published in November of 1824, either one or both of these students should have been included in the "Law Students" listing.

The "Law Students" listing is also over-inclusive. John Miller Edwards is listed as one of the "Law Students." However, Edwards does not appear on the Staples list. At the time, Miller, an 1824 Yale College graduate, was studying law in the office of Judge William Bristol, also in New Haven.⁷ The 1824 Catalogue, on this evidence, does not seem to indicate an affiliation of Yale College with the Staples school at all.

B. Pre-1824 Catalogues

A closer examination of earlier Yale College Catalogues indicates that 1824 was not even the first listing of law students in the Catalogue. The Yale College Catalogues of this time period differed substantially from the Catalogues of the present day. The early Catalogues did not contain mission statements, school traditions, or course descriptions. When they did include course descriptions, the statements were rather brief.⁸ The early Catalogues instead contained listings of names. The Catalogues list the names of the faculty and the names of attending students, separated by class. Until 1813, these listings were printed on broadsides.⁹ From 1813

⁵ See STAPLES & HITCHCOCK, *supra* note 4, at 3.

⁶ See *id.*

⁷ See *John Miller Edwards*, in OBITUARY RECORD OF GRADUATES OF YALE COLLEGE 355, 355 (1887). He was admitted to the New Haven Bar in 1826. See *id.*

⁸ See CATALOGUE OF THE OFFICERS AND STUDENTS IN YALE COLLEGE, NOVEMBER, 1826 (1826). Hereinafter, all references to the Yale College Catalogues will be in the form of "18XX YALE CATALOGUE."

⁹ See, e.g., 1812 YALE CATALOGUE [broadside].

to 1814, the listings were printed in the form of pamphlets.¹⁰ From 1815 to 1816, the listings were again on broadsides.¹¹ From 1817 on, the listings were printed in pamphlet form.¹²

Beginning in 1814, the student listings included a category of "Resident Graduates."¹³ This listing was the first listing of students in the Catalogues, immediately following the names of the "Faculty" and the "Tutors." From 1814 to 1820, the names of the Resident Graduates were followed by letters indicating the undergraduate degree obtained. If the student was not a graduate of Yale College, the letters were followed by the name of his undergraduate college. In 1821, the names of the students were followed by no designation. In 1822 and 1823, the names of the Resident Graduates were followed by the names of "Rooms," apparently indicating the residence of these graduates.

This listing of Resident Graduates continued until 1824, when it was replaced by categories of "Theological Students" and "Law Students."¹⁴ In the 1824 Catalogue, the names are followed by the letters of the undergraduate degree, the name of the undergraduate school attended, and the names of "Rooms." Many of the names included as "Theological Students" and "Law Students" were listed as "Resident Graduates" in 1823.

The role of these Resident Graduates in the College is somewhat unclear. Since 1733, the Berkeley fellowship had allowed several students from each graduating class to remain at Yale for additional study after graduation.¹⁵ Many students also stayed behind to study theology with an eye toward entering the ministry.¹⁶

¹⁰ See 1813 YALE CATALOGUE [pamphlet]; 1814 YALE CATALOGUE [pamphlet].

¹¹ See 1815 YALE CATALOGUE [broadside]; 1816 YALE CATALOGUE [broadside].

¹² See, e.g., 1817 YALE CATALOGUE [pamphlet].

¹³ See 1814 YALE CATALOGUE.

¹⁴ See 1824 YALE CATALOGUE.

¹⁵ See BROOKS M. KELLEY, YALE: A HISTORY 180 (1974).

¹⁶ See *id.* at 144-45.

The biographies of many of these Resident Graduates may be obtained from Yale class histories and obituary records.¹⁷ Some of these students received their bachelor degrees from places other than Yale, making biographical information difficult, if not impossible, to obtain. Nevertheless, a review of the biographical literature indicates that some of the students listed as Resident Graduates were students in the Staples school.

The first Resident Graduates listing in 1814 includes the name of Jonathan Ashley Welch, a Yale graduate who studied law under Seth Staples.¹⁸ Since Welch was also pursuing graduate study at the time, this listing may not be significant. Later Catalogues, though, included the names of law students who were not pursuing other graduate studies at Yale. The following list includes the students listed as Resident Graduates who were also law students at the Staples school:

YEAR	TOTAL RESIDENT GRADUATES LISTED	LAW STUDENTS
1814	16	Jonathan Ashley Welch
1815	17	Ebenezer Seeley ¹⁹
1816	18	None ²⁰
1817	20	Ebenezer Bailey ²¹
		Thomas Burr Osborne ²²
		Joel Jones? ²³

¹⁷ The biographical information contained in this Note was derived chiefly from 6 FRANKLIN BOWDITCH DEXTER, BIOGRAPHICAL SKETCHES OF THE GRADUATES OF YALE COLLEGE (1912); FRANKLIN BOWDITCH DEXTER, BIOGRAPHICAL NOTICES OF GRADUATES OF YALE COLLEGE (1913); and YALE COLLEGE, OBITUARY RECORD OF GRADUATES OF YALE COLLEGE (1865-1891). The OBITUARY RECORD was issued each year and later collected into volumes. I will cite the OBITUARY RECORD by the year in which it was published in the following form: 18XX OBITUARY RECORD. The information in these sources is generally considered reliable. However, none of the information is documented, making it difficult to determine from where some of the information was obtained. As seen below, the biographical information for some students states that they studied law under Staples. Since the source for this information is unclear, it is impossible to determine whether a complete list of Staples's students is available. The biographical information for some of the students in the Staples school does not mention that they studied law under Staples. These inaccuracies suggest that the information for other students may similarly fail to list study under Staples.

¹⁸ See 6 DEXTER, *Jonathan Ashley Welch*, in BIOGRAPHICAL SKETCHES, *supra* note 17, at 612, 613.

¹⁹ See 6 DEXTER, *Ebenezer Seeley*, in BIOGRAPHICAL SKETCHES, *supra* note 17, at 701, 702.

²⁰ Two Resident Graduates from this year, Eli Whitney Blake and Fleming Bowyer Miller, later studied law at Litchfield. See SAMUEL H. FISHER, LITCHFIELD LAW SCHOOL 1774-1833: BIOGRAPHICAL CATALOGUE OF STUDENTS 22 & 85 (1946). Their course of studies while at Yale, however, is unclear.

²¹ See DEXTER, *Ebenezer Bailey*, in BIOGRAPHICAL NOTICES, *supra* note 17, at 15, 15-16.

²² See *Thomas Burr Osborne*, in 1870 OBITUARY RECORD, *supra* note 17, at 344, 344.

Thomas Burr Osborne
 James Starr Huggins²⁴
 Hector Humphreys²⁵
 Thomas Clap Perkins²⁶
 Joel Jones?
 George Younglove Cutler?²⁷

As the list makes clear, there were several Resident Graduates who were students at the Staples school from 1814 to 1818.

After 1818, the evidence of students who were both Resident Graduates and law students is clearer. The Cash and Account Book of the Staples law firm, reproduced by Hicks,²⁸ identifies Staples's law students from the years 1819 to 1824.²⁹ When these names are compared with the students listed as Resident Graduates, there is a significant overlap. Following are the names as reported in the Cash and Account Book. To the right of each name is the year, or years, for which the student is listed as a Resident Graduate or Law Student.

YEAR OR CATALOGUE	STAPLES LAW STUDENT	YEARS LISTED AS "RESIDENT GRADUATE" "LAW STUDENT" IN YALE
1819	Edward Chapin	1819, 1820
	Samuel D. Hubbard	1819, 1820
	Hector Humphrey	1818, 1819, 1820
	Rufus Woodward ³⁰	1816
1820	Apollo D. Bates	None
	Horace Foot	1820, 1821, 1822
	James S. Huggins	1818, 1820

²³ According to his obituary, Jones studied law in New Haven, but it is not clear with whom. See *Joel Jones*, in 1860 OBITUARY RECORD, *supra* note 17, at 7, 7.

²⁴ See *James Starr Huggins*, in 1873 OBITUARY RECORD, *supra* note 17, at 82, 82.

²⁵ See DEXTER, *Hector Humphreys*, in BIOGRAPHICAL NOTICES, *supra* note 17, at 35, 35.

²⁶ See *Thomas Clap Perkins*, in 1871 OBITUARY RECORD, *supra* note 17, at 13, 13.

²⁷ According to Dexter, Cutler studied law in New Haven, but it is not clear with whom. See DEXTER, *George Younglove Cutler*, in BIOGRAPHICAL NOTICES, *supra* note 17, at 3, 4.

²⁸ See HICKS, *supra* note 3, at 12-14.

²⁹ See STAPLES & HITCHCOCK, *supra* note 4.

³⁰ Dexter does not mention that Rufus Woodward studied law. See DEXTER, *Rufus Woodward*, in BIOGRAPHICAL NOTICES, *supra* note 17, at 15, 15.

	Pollard McCormick	None
	Horatio Miller ³¹	1819, 1820
1821	John H. Brockway	1822
	Asa Child	1821
	Walter Edwards ³²	1820
	Theodore Hinsdale	1821
1822	William Barnes	None
	Asa Butts	1822
	Joel Hinman	None
	Sam C. Jackson	1822
	Oliver A. Shaw ³³	1822
	Isaac Henry Townsend ³⁴	1822, 1823, 1824
	Ira L. Ufford	None
	G. Fitch Wheeler ³⁵	1822, 1823
1823	Charles Atwood	1822, 1823
	William Barnes	None
	John Boyd	1823, 1824
	Sherman Crosswell ³⁶	1822, 1823, 1824
	Simeon F. Dixon	1823
	Samuel Hayes	1824
	Charles F. Johnson	None
	John H. Lathrop	1819
	Henry E. Peck ³⁷	1823, 1824
	Amasa G. Porter	1823, 1824
	Edward Rockwell	1823
	William Rockwell	1823
	Aaron N. Skinner	1823, 1824
	Solomon Stoddard	None
	William G. Verplanck ³⁸	1823

³¹ The obituary for Horatio Miller reports that he studied law in New Haven but does not say with whom. See *Horatio Miller*, in 1860 OBITUARY RECORD, *supra* note 17, at 8, 8.

³² The obituary for Walter Edwards reports that he studied law in New York, not New Haven. See *Walter Edwards*, in 1882 OBITUARY RECORD, *supra* note 17, at 69, 69.

³³ Dexter reports that Oliver Abbot Shaw studied law in New Haven, but he does not state that the study occurred with Staples. See DEXTER, *Oliver Abbot Shaw*, in BIOGRAPHICAL NOTICES, *supra* note 17, at 79, 79.

³⁴ Dexter reports that Isaac Henry Townsend studied for two years in the Yale Law School. See DEXTER, *Isaac Henry Townsend*, in BIOGRAPHICAL NOTICES, *supra* note 17, at 97, 97.

³⁵ Dexter mentions that Gail Fitch Wheeler was a lawyer in Bridgeport but does not report where he studied. See DEXTER, *Gail Fitch Wheeler*, in BIOGRAPHICAL NOTICES, *supra* note 17, at 65, 66.

³⁶ Dexter reports that Sherman Crosswell studied under Nathan Smith in New Haven; Staples is not mentioned. See DEXTER, *Sherman Crosswell*, in BIOGRAPHICAL NOTICES, *supra* note 17, at 88, 88.

³⁷ Dexter reports that Henry Edward Peck "studied law in the law school affiliated with the College." DEXTER, *Henry Edward Peck*, in BIOGRAPHICAL NOTICES, *supra* note 17, at 108, 109.

³⁸ The obituary for William Gordon Verplanck does not indicate that he studied law. See *William Gordon Verplanck*, in 1879 OBITUARY RECORD, *supra* note 17, at 337, 337-38.

	Daniel Whiting ³⁹	1823
	Frederick R. Whittlesey	1824
1824	S. J. Andrews	1824
	Linus Child	1824
	William Read	None
	George B. Ripley	None
	William P. Skinner	1824
	Isaac Webb	1824

Comparing the two lists, we see that they do not completely overlap. Out of thirty-eight names listed between 1819 and 1823, twenty-nine were listed as Resident Graduates at some point. Only Woodward and Lathrop were listed as Resident Graduates in years that are significantly different from the years listed in the Cash and Account Book. Woodward, listed as a Resident Graduate in 1816, was listed as a Tutor in the 1819 Catalogue.⁴⁰ Lathrop, listed as a Resident Graduate in 1819, was listed as a Tutor in the 1823 Catalogue.⁴¹ These two students pursued the study of law while acting as Tutors.

The first name not cross-listed is Apollo D. Bates in 1820. Bates enrolled in the school on March 28, 1820, and left on June 28, 1820.⁴² Since the Catalogues were published in November, Bates left before his name was included. Similarly, Pollard McCormick enrolled on December 1, 1820, and left six months later before the Catalogue was published.⁴³

William Barnes is the only student listed twice in the Staples book. Barnes first entered the Staples school in May of 1822.⁴⁴ The Account Book states that he paid \$15 for one quarter in the school,⁴⁵ indicating that he dropped out in August or September. Since he left before the

³⁹ Dexter reports that Daniel Wordsworth Whiting studied law does not say with whom. See DEXTER, *Daniel Wordsworth Whiting*, in BIOGRAPHICAL NOTICES, *supra* note 17, at 117, 117.

⁴⁰ See 1819 YALE CATALOGUE.

⁴¹ See 1823 YALE CATALOGUE.

⁴² See STAPLES & HITCHCOCK, *supra* note 4, at 1.

⁴³ See *id.* at 1.

⁴⁴ See *id.* at 2.

⁴⁵ See *id.*

Catalogue was published in November, his name does not appear in the 1822 Catalogue. Barnes reentered the office on September 5, 1823.⁴⁶ He was admitted to the bar soon after, in November of 1823.⁴⁷ He may have stood for the bar before the Catalogue was published.

Solomon Stoddard, who was never listed as a Resident Graduate, was listed as a tutor in 1823.⁴⁸ He entered the office on July 7, 1823, but relinquished his study soon after.⁴⁹

Finally, Samuel Hayes entered the office on November 29, 1823, and Frederick R. Whittlesey entered on December 22, 1823.⁵⁰ Since the Catalogues were issued in November, these individuals were not yet law students at press time. They were listed as law students in the 1824 Catalogue.

All of the students listed in the Cash and Account Book are accounted for except three. Joel Hinman enrolled on March 26, 1822, and withdrew after six months.⁵¹ He again entered on October 29, 1822, though it unclear how long he remained.⁵² Ira L. Ufford entered on June 18, 1822, and remained for six months.⁵³ Charles F. Johnson entered on November 15, 1823, and remained for a year.⁵⁴ These three students seem to have been in the Staples school when the Catalogues were published, yet are not listed among the Resident Graduates. Despite these omitted students, the lists overlap by well over ninety percent.

There is no clear reason why these students would have been omitted. First, the students would not have been omitted merely because they did not graduate from Yale College. At least one student, Samuel C. Jackson, was listed on both lists and was not a Yale graduate.

⁴⁶ See *id.* at 3.

⁴⁷ See *id.*

⁴⁸ See 1823 YALE CATALOGUE.

⁴⁹ See STAPLES & HITCHCOCK, *supra* note 4, at 3.

⁵⁰ See *id.* at 4.

⁵¹ See *id.* at 2.

⁵² See *id.*

⁵³ See *id.*

⁵⁴ See *id.* at 4.

Furthermore, at least seventeen other students who are listed as Resident Graduates from the year 1814 to the year 1823 did not attend Yale College or receive any other degree from Yale.

Several others received graduate or honorary degrees from Yale after being listed as Resident Graduates. Since there were around 150 Resident Graduates listed in these Catalogues, it may seem surprising that such a small number hailed from colleges other than Yale. However, the relatively primitive state of graduate studies at the time may explain why the Yale program drew primarily from its own undergraduates.

One likely explanation of the failure to list Hinman and Ufford is that neither was a college graduate. This inference is supported only by negative evidence, since neither is listed as a graduate of the colleges for which such information is available.⁵⁵ Yale may have been reluctant to include non-graduates among its listing of Resident Graduates. This explanation would show why Jackson, an 1821 graduate of Middlebury,⁵⁶ was included in the listing. It would not explain why Johnson, an 1823 Union College graduate,⁵⁷ was omitted. It would also not explain why Read, an 1823 graduate of Bowdoin,⁵⁸ and Ripley, an 1822 Yale graduate,⁵⁹ were not included in the 1824 listing.

From the available evidence, there is no clear reason why Hinman, Ufford, Johnson, Read, and Ripley, were omitted from the Yale Catalogue listings. We cannot exclude such possibilities as neglect on the part of the students or the part of the Yale compiler in placing these names on the list. Apart from these five omissions, the list of students studying at the Staples school and the list of Resident Graduates in the Yale Catalogue accord.

⁵⁵ This information is collected in JOHN FARMER, A LIST OF THE GRADUATES, AND THOSE WHO HAVE RECEIVED DEGREES, AT ALL OF THE NEW ENGLAND COLLEGES (1835) [hereinafter FARMER, NEW ENGLAND], and JOHN FARMER, A LIST OF THE GRADUATES, AND THOSE WHO HAVE RECEIVED DEGREES AT THE SEVERAL COLLEGES IN THE STATES OF NEW YORK AND NEW JERSEY (1838) [hereinafter FARMER, NEW YORK].

⁵⁶ See FARMER, NEW ENGLAND, *supra* note 55, at 74.

⁵⁷ See FARMER, NEW YORK, *supra* note 55, at 33.

⁵⁸ See FARMER, NEW ENGLAND, *supra* note 55, at 110.

C. Subcategorizing the "Resident Graduates"

In 1824, the category of Resident Graduates disappeared from the Yale Catalogue. In its place were two listings, one for "Theological Students" and one for "Law Students." This listing of law students in the Catalogue has been taken to indicate the first affiliation of Yale College with the Staples school. However, in light of the above analysis, this separation of the students into two groups appears to be nothing more than a further clarification of categories.

The founding of the Theological Department in 1822 might have necessitated this further clarification of categories.⁶⁰ In the 1824 Catalogue, eighteen students are listed as Theological Students. The remaining fourteen students are listed as Law Students. These thirty-two graduate students represented a slight increase in graduate students from 1823, when twenty-eight students were listed as Resident Graduates. Since there is a substantial overlap between the students listed as Resident Graduates in 1823 and the Theological and Law Students of 1824, it seems that the 1824 Catalogue merely gave a clearer designation to an existing category of students. This conclusion is bolstered by the fact that the Resident Graduate listing disappeared altogether from the 1824 Catalogue and did not reappear until 1826.

An acknowledgement that some Resident Graduates were law students seems to occur in the 1822 and 1823. In 1823, twelve of the thirteen law students enrolled in the Staples school are listed with the term "Law Office"⁶¹ beside their names. The only exception is Sherman Croswell who is listed as living at "Rev. Mr. Croswell's," the home of his father. In 1822, only two

⁵⁹ See *id.* at 112.

⁶⁰ See KELLEY, *supra* note 15, at 145-46.

⁶¹ The meaning of the "Law Office" designation is unclear. Most of the "Rooms" indicate residences where students may have boarded. However, it is not clear that "Law Office" was intended to designate the same thing. See FREDERICK C. HICKS, YALE LAW SCHOOL FROM THE FOUNDERS TO DUTTON: 1845-1869, at 44-45 (1936).

students are listed as rooming at "Law Office." However, only one of these students is listed on the Staples list. The other, Sutherland Douglas, was a graduate student at the time.

There appears to be no discernable pattern in the listing of Resident Graduates. The Catalogue itself is silent on who is included as a Resident Graduate and who is not. The scant historical record also offers little help. Dexter, who spent years researching biographies of early Yale students, neglected to report where he got his information. For some students, he may have relied on the Catalogue itself to determine who pursued graduate work at Yale. As we have seen, Dexter failed to report that some students studied under Staples when they in fact did.

D. Comparing to Harvard College Catalogues

It is instructive to note that Harvard also listed its "Resident Graduates." In 1811, Harvard included a category of Resident Graduates on its broadside Catalogues.⁶² This listing continued until 1819, when Harvard began publishing its Catalogue in booklet form.⁶³ In 1819, the Resident Graduates category was replaced by three categories: "Candidates for the Ministry and Theological Students," "Law Students," and "Resident Medical Students."⁶⁴ Beginning in 1817, Harvard listed law students in the category of Resident Graduates, a practice that continued until the further subcategorizing of 1819.

Harvard's Royall Professorship of Law was filled in 1815 when the Harvard Corporation elected Isaac Parker to the post.⁶⁵ Parker offered a few lectures: "The audience offered him was

⁶² Compare CATALOGUE OF THE OFFICERS AND STUDENTS OF HARVARD UNIVERSITY, CAMBRIDGE, OCTOBER, 1810 (1810), with CATALOGUE OF THE OFFICERS AND STUDENTS OF HARVARD UNIVERSITY, CAMBRIDGE, OCTOBER, 1811 (1811). Hereinafter, all references to the Harvard University catalogues will be in the form of "18XX HARVARD CATALOGUE."

⁶³ See 1819 HARVARD CATALOGUE.

⁶⁴ See *id.*

⁶⁵ See THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL: 1817-1917, 2 (1918).

merely a voluntary meeting of College seniors and resident graduates,⁶⁶ with perhaps a sprinkling of Boston lawyers; the same sort of audience to which the professors of law in the other colleges were lecturing."⁶⁷ In 1817, Parker presented a plan to the Corporation for the creation of a law school, and the Corporation created the Harvard Law School on May 17, 1817.⁶⁸ Asahel Stearns was appointed as the first professor, and the School was given quarters in Harvard Square.⁶⁹

In the 1817 Catalogue, thirty-seven students are listed under the Resident Graduates heading.⁷⁰ Among those students are six law students: Caleb Cushing, Charles Moody Dustin, Wyllys Lyman, John Waters Proctor, Samuel Edmund Sewall, and William Rounsville Pierce Washburn.⁷¹ Dustin has been deemed to be the first graduate of the Harvard Law School in 1817,⁷² though the first Bachelor of Laws degree was not bestowed until 1820.⁷³ Warren lists Cushing, Lyman, and Proctor as 1818 graduates.⁷⁴ Warren identifies another student, Henry Marsh, as an 1818 Harvard Law graduate,⁷⁵ but Marsh is not listed as Resident Graduate.

The omission of Marsh, like the omission of the five Yale students, appears to have no clear explanation. Marsh was a college graduate; he graduated from Williams College in 1815.⁷⁶

⁶⁶ Since there was no law school in 1815, these resident graduates were likely pursuing some other sort of graduate study at the time.

⁶⁷ CENTENNIAL HISTORY, *supra* note 65, at 3.

⁶⁸ *See id.* at 3-4.

⁶⁹ *See id.* at 4.

⁷⁰ *See* 1817 HARVARD CATALOGUE.

⁷¹ *See* 3 CHARLES WARREN, HISTORY OF THE HARVARD LAW SCHOOL AND OF EARLY LEGAL CONDITIONS IN AMERICA 1-2 (1908).

⁷² *See id.* at 1.

⁷³ *See* ARTHUR E. SUTHERLAND, THE LAW AT HARVARD: A HISTORY OF IDEAS AND MEN: 1817-1967, 63 (1967). The degree was not particularly significant, and only one-fourth of the students received them. *See id.*

⁷⁴ *See* 3 WARREN, *supra* note 71, at 1.

⁷⁵ *See id.*

⁷⁶ *See id.*

He was not a Harvard graduate, but neither was Wyllys Lyman, an 1817 Yale graduate who was listed.⁷⁷ Marsh's omission appears to have no significance.

The 1818 Catalogue lists ten law students as Resident Graduates.⁷⁸ Proctor, Sewall, and Washburn appear for the second time, together with Benjamin Franklin Hallett, Oliver William Bourn Peabody, Richard Ray, Edward Sawyer, Mucius Scaevola Spark, George Aaron Tufts, and Joseph Willard. Warren identifies all ten as law school graduates of 1819 or 1820.⁷⁹ Proctor, in fact, is listed as a graduate in 1818, 1819, and 1820.⁸⁰ Tufts is listed as a graduate in 1819 and 1820.⁸¹

In 1819, the Harvard Catalogue began listing "Law Students" in a separate category.⁸² This separate listing continued at least until 1824, when Yale adopted a similar categorization in its Catalogue.

The Harvard and Yale catalogs have distinct parallels. Though Yale switched from the broadside to the booklet form for the first time in 1813, Harvard did not adopt the practice until 1819. In Catalogue organization, though, Harvard led Yale.⁸³ Harvard listed Resident Graduates beginning in 1811; Yale listed them in 1814. Harvard separated its Resident Graduates into categories in 1819; Yale did so in 1824. The Harvard Catalogue, like the Yale Catalogue, was not free from omissions that elude explanation.

⁷⁷ See *id.*

⁷⁸ See 1818 HARVARD CATALOGUE.

⁷⁹ See 3 WARREN, *supra* note 71, at 1-2.

⁸⁰ See *id.*

⁸¹ See *id.*

⁸² See 1819 HARVARD CATALOGUE. Peabody, Sawyer, Spark, and Willard are included in the 1819 listing. See *id.*

⁸³ Yale also changed the title of its catalog to reflect Harvard's title. Until 1819, Yale's entitled its catalog "Catalogue of the Faculty and Students of Yale College." Beginning in 1819, this title was changed to "Catalogue of the Officers and Students of Yale College." Harvard entitled its catalog "Catalogue of the Officers and Students of Harvard University" from at least 1810.

E. Possible Motivations for Listing Students

Perhaps the organization of Yale's Catalogue was influenced by the organization of Harvard's Catalogue. Yale may have included law students in its listing of "Resident Graduates" in imitation of Harvard. In the years leading up to 1817, only two law students appear in the Yale Catalogue in three years. In 1817, three law students appear; in 1818, four law students appear. Several students are listed in subsequent years. The listing of Yale law students in significant numbers appears to coincide with the listing of law students in the Harvard Catalogue.

Besides imitation, Yale's listing could have had several other purposes. First, by showing the numerous states from which students were drawn, Yale could claim to be a national college. Second, Yale could show its size. Third, enabling potential students to see who was already a student of Yale may have encouraged them to enroll. In an era of personal relationships, names may have been more important than the curriculum. Finally, the listing of addresses with the student names indicate that the catalogues may have been used as directories of some sort.

If the Yale Catalogue served only an informative function, there may have been less strict criteria for inclusion. The officer in charge of the Catalogue may have included anyone in the listings who appeared to be continuing studies in or around the College, as well as students from other colleges who were doing similar things. Including students from other colleges would again show Yale's national scope.

The categorization of the "Resident Graduates" into separate professional courses also symbolized an extension of Yale's curriculum. The addition of professional schools to Yale's program made it look more like a university than a mere college. The pure symbolism of these

listings is reflected in the fact that the "Theological Students" listing was added in 1824, while the Theological Department was organized in 1822.⁸⁴

The symbolic function of the Catalogue reflects the changes in Yale College during the early nineteenth-century. When Timothy Dwight was appointed President of Yale College in 1795, his ambition was to change Yale from a regional college to a national university by expanding its student body and its curriculum.⁸⁵ Dwight's first success was the establishment of the Yale Medical School in 1814.⁸⁶ When Dwight died in 1817, Yale was "a national institution and the largest in the country."⁸⁷ The listing of Resident Graduates beginning in 1814 may reflect Dwight's desire to improve Yale's claim to the status of a university. For that reason, Yale may have attempted to list as many names as possible under the Resident Graduates category no matter how loose the connection with the College was.

III. The "Founding" of the Yale Law School

As shown above, a close examination of the Yale catalogues shows that the inclusion of "Law Students" in the 1824 Catalogue does not represent a clear connection between the Staples school and Yale College. But if 1824 is not the founding date, then what is?

⁸⁴ See KELLEY, *supra* note 15, at 145-46.

⁸⁵ See *id.* at 127.

⁸⁶ See *id.* at 132.

⁸⁷ *Id.* at 142.

A. Early Connections

The first significant date is 1777, when Yale President Ezra Stiles drafted a proposal for a Professorship of Law in Yale College.⁸⁸ This professorship was never actually filled,⁸⁹ though Stiles himself gave some lectures on the law to the undergraduates.⁹⁰

In 1801, Yale College finally created a Professorship of Law at President Dwight's urging.⁹¹ It was Dwight's first step towards making Yale a university.⁹² The Professor of Law was supposed to deliver lectures to undergraduates on various legal topics. The first appointee was Elizur Goodrich, a 1779 Yale graduate and a controversial Federalist partisan.⁹³ Goodrich held this position until 1810.⁹⁴ During that period, Goodrich also served as the Mayor of New Haven and as a member of the Governor's Council.⁹⁵ From 1806 to 1807, Goodrich did not deliver any lectures.⁹⁶

During the early 1800s, Seth Staples, a 1797 Yale graduate, also began teaching law in his New Haven law office.⁹⁷ In 1800, Staples imported a "very complete law library" from England to which he continued to add a number of works.⁹⁸ This collection of law books made Staples's office an attractive place to study law.⁹⁹ The earliest known students in the Staples school were Samuel Johnson Hitchcock, around 1811,¹⁰⁰ and Ralph Isaacs Ingersoll, who studied

⁸⁸ See 1 WARREN, *supra* note 71, 165-66.

⁸⁹ See *id.* at 168.

⁹⁰ See *id.* at 168-69.

⁹¹ See *id.* at 178.

⁹² See KELLEY, *supra* note 15, at 131.

⁹³ See *id.* at 131.

⁹⁴ See *id.*; 1 WARREN, *supra* note 71, at 178.

⁹⁵ See KELLEY, *supra* note 15, at 131.

⁹⁶ See *id.* at 131.

⁹⁷ See 5 DEXTER, *Seth Perkins Staples*, in BIOGRAPHICAL SKETCHES, *supra* note 17, at 310, 310.

⁹⁸ See HICKS, *supra* note 3, at 9.

⁹⁹ See Staples, *supra* note 97, at 311.

¹⁰⁰ See 6 DEXTER, *Samuel Johnson Hitchcock*, in BIOGRAPHICAL SKETCHES, *supra* note 17, at 257, 257.

there around 1810.¹⁰¹ In 1820, Staples formed a law partnership with Hitchcock, an 1809 Yale graduate and former student.¹⁰² Hitchcock also began teaching in the Staples school.¹⁰³

In 1822, the Yale Catalogue includes the first of a series of increasing acknowledgements of the law office education. Two students are listed as rooming in the "Law Office," though one of the students was not a student in the Staples school. By 1823, twelve students are listed as rooming in the law office. All of these students are students in Staple's school.

Staples moved to New York in 1824, eventually establishing a strong patent law practice there.¹⁰⁴ With Staples gone, Hitchcock brought on David Daggett, who had resumed the practice of law in 1819 after the end of his term in the United States Senate.¹⁰⁵ The 1824 Catalogue also includes a listing of "Law Students," all but one of whom were students in the Staples school.

In 1826, two important events cemented a connection between the Staples school and Yale College. First, David Daggett was made Professor of Law, filling the seat left empty by Elizur Goodrich in 1810. As part of his duties, Daggett delivered lectures to students in Yale College. Second, the Yale Catalogue included a description of the law office curriculum under the heading "Law School,"¹⁰⁶ indicating that Yale acknowledged a strong connection.

¹⁰¹ See HICKS, *supra* note 3, at 12.

¹⁰² See Hitchcock, *supra* note 100, at 257.

¹⁰³ See *id.* at 258.

¹⁰⁴ See HICKS, *supra* note 3, at 8.

¹⁰⁵ See William A. Robinson, *David Daggett*, in 5 DICTIONARY OF AM. BIOGRAPHY 26, 27 (1930).

¹⁰⁶ This description reads as follows:

The Law School is under the instruction of the Hon. David Daggett, a Judge of the Supreme Court in Connecticut, and Professor of Law, and Samuel J. Hitchcock, Esq., attorney and counsellor at law.

The students are required to peruse the most important elementary treatises, and are daily examined on the author they are reading, and receive at the same time explanations and illustrations of the subject they are studying.

A course of lectures is delivered by the Professor of Law, on all the titles and subjects of the Common and Statute Law.

A moot court is holden once a week, or oftener, which employs the students in drawing pleadings and investigating and arguing questions of law.

The students are also called upon, from time to time, to draw declarations, pleadings, contracts, and other instruments, connected with the practice of law, and to do the most important duties of an attorney's clerk.

In 1826, a description of the theological school was also added under the heading of "Theological Department." Again, the inclusion of the description appears to be more symbolic than substantive.

Yale awarded its first Bachelor of Laws (LL.B.) degree in 1843.¹⁰⁷ The degree was awarded at the urging of Hitchcock, who worried that the Harvard Law School was more attractive because it awarded degrees.¹⁰⁸ The 1842 Catalogue mentions that a Bachelor of Laws degree will be conferred on students in the Law School, and the Yale Corporation, on August 15, 1843, prescribed regulations for the degrees.¹⁰⁹ The granting of degrees by Yale College to students of the "Law School" indicates a solid connection between the schools.

However, Yale's adoption of the Law School was not fully complete until Hitchcock died on August 31, 1845.¹¹⁰ Henry White, who was the executor of Hitchcock's estate,¹¹¹ sought to sell Hitchcock's library to the instructors of the School. They referred White to Yale College. After a subscription of funds was made from members of the New Haven Bar, the Yale Corporation resolved to purchase the library on August 11, 1846.¹¹² Eight days later, on August

They are occasionally required to write disquisitions on some topic of law, and collect the authorities to support their opinions.

The students are furnished with the use of the elementary books, and have access, at all times, to the college libraries, and to a law library, comprising very important works both ancient and modern.

The terms for tuition and use of library are \$75 per annum. The course of study occupies two years, allowing eight weeks vacation each year. Students are however received for a shorter period.

The Professor of Law will also, for the present, occasionally deliver lectures to the Senior class in College, until arrangements are made for a systematic course to be permanently continued.

1826 YALE CATALOGUE (quoted in HICKS, *supra* note 3, at 20-21).

¹⁰⁷ See HICKS, *supra* note 3, at 24.

¹⁰⁸ See *id.* at 24-25.

¹⁰⁹ See *id.* at 25-26.

¹¹⁰ See *id.* at 19.

¹¹¹ See *id.* at 29. As the executor of Hitchcock's estate, White also assumed teaching duties at the School. See HICKS, *supra* note 61, at 1-2.

¹¹² See HICKS, *supra* note 3, at 34-35.

19, 1846, the Yale Corporation officially established a "Law Department" in the College.¹¹³ In the 1846 Catalogue, the "Law School" heading was changed to "Law Department."

B. The Post-Civil War Period

Despite these symbolic connections between the law school and Yale, the Yale Law School remained in serious trouble. Though the Law School was then considered a department of Yale College, the Yale Corporation had not assumed full financial support for it.¹¹⁴ From 1847 to 1869, the actions of one man, Henry Dutton, prevented the Yale Law School from disappearing. Almost single-handedly, Dutton rallied the support of the New Haven Bar behind the school and protected its existence. From 1865 to 1869, Dutton taught alone at the School.¹¹⁵ Despite his efforts, when Dutton died in 1869 the Law School was not yet a self-sustaining institution. Indeed, the Law School was unable to identify the instructors in the school three months before the 1869 semester opened.¹¹⁶

Four men volunteered to take over instruction in the Law School,¹¹⁷ but when the school opened in September of 1869, only Simeon E. Baldwin, Johnson T. Platt, and William C. Robinson were willing to teach.¹¹⁸ In addition to their teaching duties, these three men also built up the library, divided the students into senior and junior classes, and began to raise money for the Law School. To supplement the curriculum, the teachers invited other Yale faculty members

¹¹³ See HICKS, *supra* note 61, at 4-5.

¹¹⁴ See *id.* at 34.

¹¹⁵ See *id.* at 34-35.

¹¹⁶ See FREDERICK C. HICKS, YALE LAW SCHOOL: 1869-1894, INCLUDING THE COUNTY COURT HOUSE PERIOD 2 (1937).

¹¹⁷ See *id.* at 3.

¹¹⁸ See *id.* at 4.

to give lectures.¹¹⁹ In 1871, the Law School hired its first full time professor, Francis Wayland.¹²⁰

The Law School moved into the third floor of the New Haven courthouse in 1873.¹²¹ This space included a lecture room, a library, and faculty offices, and gave the Law School its first permanent home. This relocation of the Law School marked its emergence from the crisis period following Dutton's death. To underscore its accomplishments, the School held a celebration on June 24, 1874.

The 1874 celebration was the first significant public ceremony in the Law School's history.¹²² It served partly as a commencement and partly as a celebration of the School's fiftieth anniversary. The anniversary aspect was commented upon in a speech delivered at the ceremony by Theodore D. Woolsey, the Yale president who had presided over the crisis years. In his speech, Woolsey places the association of the Staples school with Yale College at 1824, because, in 1824, the Yale College Catalogue included a listing of "Law Students," creating "a sort of vague connection" between the two schools.¹²³ The published version of Woolsey's speech indicates that it was delivered "at the Fiftieth Anniversary of the Foundation of the Department"¹²⁴ and the "Prefatory Note" briefly discusses the "Semicentennial Anniversary of the Yale Law School."¹²⁵

¹¹⁹ See *id.* at 9.

¹²⁰ See *id.* at 11.

¹²¹ See *id.* at 14.

¹²² See *id.* at 16.

¹²³ WOOLSEY, *supra* note 1, at 9.

¹²⁴ *Id.* at i.

¹²⁵ *Id.* at iii.

Woolsey's pronouncement appears to be the first to note the significance of the 1824 listing.¹²⁶ The selection of the 1824 founding date was followed by Francis Wayland, who states, echoing Woolsey's words almost exactly, that the listing established "a species of vague connection" between the schools.¹²⁷ Subsequent historians followed Woolsey and Wayland in the 1824 claim.¹²⁸

At first glance, the actual catalogues seem to support Woolsey's choice of 1824. The 1824 Catalogue marks the first appearance of a category entitled "Law Students" in the Yale College Catalogue. A category of "Theological Students" also appears for the first time in the 1824 Catalogue. In subsequent years, these categories remain, attesting to the continued existence of these departments. Superficially, then, the 1824 Catalogue seems to contain Yale's first acknowledgement of the Staples law school.

Woolsey's 1824 claim, made in 1874, coincides neatly with the Law School's emergence from its post-Civil War difficulties. It also coincides with three events that made the Law School a viable institution. First, in 1871, the law school emerged from a crisis of succession by appointing its first full-time professor. Second, in 1872, Law School alumni formed the Yale Law Alumni Association.¹²⁹ Third, in 1873, the law school gained a permanent home on the top floor of the New Haven Courthouse. These three events were celebrated with two symbolic events. First, the law school had its first public celebration. Second, at this public celebration,

¹²⁶ In his discussion of the Law Department, Ebenezer Baldwin omits any mention of the 1824 connection. See EBENEZER BALDWIN, *ANNALS OF YALE COLLEGE* 172-174 (2d ed. 1838). Instead, he states that Daggett created the law school after he was appointed Professor of Law in 1826. See *id.* at 174.

¹²⁷ Francis Wayland, *Law Department, in YALE COLLEGE, A SKETCH OF ITS HISTORY* 90, 91 (William Lathrop Kingsley ed. 1879).

¹²⁸ See Leonard M. Daggett, *The Yale Law School*, 1 GREEN BAG 239, 240 (1889); *Yale and its Law School: An Historical Profile*, 2 YALE L. REP., no. 3, 10, 14 (1957); but see LAURA KALMAN, *LEGAL REALISM AT YALE: 1927-1960*, at 260 n.1 (1986) ("It is difficult to pinpoint the exact beginning of Yale Law School.").

¹²⁹ WOOLSEY, *supra* note 1, at iii.

the law school, through Woolsey, made its first claim to antiquity by choosing 1824 as its founding date.

C. Multiple Affiliations

But 1824 was not the only possible choice. In fact, almost any of the significant events listed above could represent a "founding" of some kind. Typically, all of those events coincide when a school is founded. For this reason, the selection of a particular date as a founding date does not fully capture the course of events that brought together the Staples school and Yale College. Yale did not create its law school as Harvard did. Nor did the schools merge at one particular time. Instead, over the course of many years, graduates of Yale College attended classes and studied at the school. Yale alumni also taught at the school. The Staples school in New Haven offered a convenient choice to students who wished to study law there. The sharing of David Daggett between the schools strengthened their connection.

The granting of degrees in 1843 reinforced the relationship between the schools. Three years later, Yale College officially established a Law Department by an act of the Corporation. The inverted timing of these two actions only further demonstrates that the affiliation did not proceed in a deliberate way but rather occurred almost by accident. Eventually, the two schools became one.

The idea that two schools could merge almost accidentally seems foreign to our conception of the modern university. Today, the university controls the flow of money and faculty to the individual schools. But, in the early 1800s, the idea of the university was fairly new and untested. The Staples school, like most proprietary law schools of the period, was run for profit with the energy of practicing lawyers. The merger of the Staples school with Yale

College, even by 1843, changed this practice very little. In fact, members of the New Haven Bar carried on instruction in the school exclusively until 1871, when the first full-time professor was appointed.

The merger of the schools was motivated by mutual need. A law school would make Yale look more like a university. When Harvard took steps toward founding the Harvard Law School, the absence of a Yale law school became even more evident. Instead of creating a law school on its own, Yale began to establish connections with the school of an alumnus. The Staples school already had books, an expensive necessity for legal education. Several Yale alumni were studying there already, and Staples had the experience and desire to continue teaching.

Staples also had a strong incentive to affiliate with Yale. In the short run, an affiliation with Yale would allow Staples to attract students to his school. The affiliation would further aid Staples in competing with the Litchfield Law School, which was already well established.¹³⁰ Perhaps Staples also recognized that the Harvard Law School, because of its university affiliation, would have a stronger claim to being a legal educator than would his proprietary school.

In the long run, the merger with Yale allowed the Yale Law School to survive. Schools that had no institutional backing eventually disappeared. Litchfield, the first American law school, did so in 1833.¹³¹ However, the sluggishness of the merger almost allowed the Yale Law School to die away. It was not until 1874, when the University provided a full-time professor and a room in the courthouse, that the Law School could consider itself safely in the care of

¹³⁰ See generally MARIAN C. MCKENNA, TAPPING REEVE AND THE LITCHFIELD LAW SCHOOL (1986).

¹³¹ See *id.* at 174.

Yale. From the perspective of 1874, the apparent first connection between the law school and Yale in 1824 seemed truly auspicious.

IV. Conclusion

Despite the 1824 founding tradition, the 1824 Catalogue listing of "Law Students" does not represent the founding of the Yale Law School. Instead, the listing merely clarified a preexisting Resident Graduates category that included both theological students and law students. This clarification indicates that the founding of the Yale Law School is a much more complicated story than the 1824 date suggests. In fact, the complicated history of the Yale Law School in the nineteenth-century belies the entire notion of a founding. The Yale Law School emerged, not from a founding, but from an accidental merger with Yale that took place over a period of fifty years. It may have been the Law School's emergence from this history that inspired the claim of the 1824 founding date.